

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

KEVIN FERNANDEZ,

Plaintiff,

v.

DAWN JONES, *et al.*,

Defendants.

Case No. 3:21-cv-00522-RCJ-CSD

ORDER

Plaintiff Kevin Fernandez brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1.) On May 19, 2022, this Court ordered Fernandez to file an amended complaint by June 18, 2022. (ECF No. 8.) The Court warned Fernandez that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 6.) That deadline expired and Fernandez did not file an amended complaint, move for an extension, or otherwise respond.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*

1 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
2 *Malone*, 833 F.2d at 130).

3 The first two factors, the public's interest in expeditiously resolving this litigation  
4 and the Court's interest in managing its docket, weigh in favor of dismissing Fernandez's  
5 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
6 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
7 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
8 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
9 cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the Court to consider whether less drastic alternatives can  
11 be used to correct the party's failure that brought about the Court's need to consider  
12 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
13 that considering less drastic alternatives *before* the party has disobeyed a court order  
14 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
15 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
16 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
17 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
18 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).  
19 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
20 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
21 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and  
22 unless Fernandez files an amended complaint, the only alternative is to enter a second  
23 order setting another deadline. But the reality of repeating an ignored order is that it often  
24 only delays the inevitable and squanders the Court's finite resources. The circumstances  
25 here do not indicate that this case will be an exception: there is no hint that Fernandez  
26 needs additional time or evidence that he did not receive the Court's screening order.  
27 Setting another deadline is not a meaningful alternative given these circumstances. So  
28 the fifth factor favors dismissal.

1     **II.     CONCLUSION**

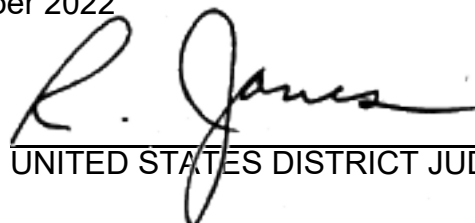
2           Having thoroughly considered these dismissal factors, the Court finds that they  
3 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
4 prejudice based on Fernandez's failure to file an amended complaint in compliance with  
5 this Court's May 19, 2022, order and for failure to state a claim. The Clerk of Court is  
6 directed to enter judgment accordingly and close this case. No other documents may be  
7 filed in this now-closed case. If Fernandez wishes to pursue his claims, he must file a  
8 complaint in a new case.

9           It is further ordered that Fernandez's motions for various relief (ECF Nos. 6, 7) are  
10 denied as moot.

11           It is further ordered that Fernandez's application to proceed *in forma pauperis*  
12 (ECF No. 4) is granted. Fernandez shall not be required to pay an initial installment of  
13 the filing fee. In the event that this action is dismissed, the full filing fee must still be paid  
14 pursuant to 28 U.S.C. § 1915(b)(2). It is further ordered that Fernandez is permitted to  
15 maintain this action to conclusion without the necessity of prepayment of any additional  
16 fees or costs or the giving of security therefor.

17           It is further ordered that Pursuant to 28 U.S.C. § 1915, as amended by the Prison  
18 Litigation Reform Act, the Nevada Department of Corrections will forward payments from  
19 the account of **Kevin Fernandez, # 1191576** to the Clerk of the United States District  
20 Court, District of Nevada, 20% of the preceding month's deposits (in months that the  
21 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The  
22 Clerk of the Court will send a copy of this order to the Finance Division of the Clerk's  
23 Office. The Clerk will send a copy of this order to the attention of Chief of Inmate Services  
24 for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

25  
26           DATED THIS 20<sup>th</sup> day of December 2022

27  
28             
UNITED STATES DISTRICT JUDGE